

VENABLE LLP
Steven E. Swaney (SBN 221437)
seswaney@venable.com
101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: 415.653.3750
Facsimile: 415.653.3755

Leonard L. Gordon (*pro hac vice*)
llgordon@Venable.com
Benjamin P. Argyle (*pro hac vice*)
bpargyle@Venable.com
151 W. 42nd Street, 49th Floor
New York, NY 10036
Telephone: 212.307.5500
Facsimile: 212.307.5598

Attorney for Non-Party Nintendo of America

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

[PROPOSED] ORDER GRANTING NON-PARTY NINTENDO OF AMERICA INC. STATEMENT PURSUANT TO LOCAL RULE 79-5(f) AS TO WHY ITS CONFIDENTIAL INFORMATION IN DKT. NO. 175 (FEDERAL TRADE COMMISSION INITIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW) SHOULD REMAIN UNDER SEAL

[PROPOSED] ORDER

Having considered Nintendo of America Inc.'s ("NOA") Statement Pursuant to Civil Local Rule 79-5(f) As to Why Its Confidential Information in Dkt. No. 175 (Federal Trade Commission Initial Proposed Findings of Fact and Conclusions of Law) Should Remain Under Seal, the Court ORDERS that the below designated portions remain redacted and kept under seal.

Para.	Page	Line	NOA's Position on Sealing
32	4	3-4	The redacted portion and the statement and accompanying citation misleadingly attributes the statement as though it is internally supported by Nintendo. False impressions regarding Nintendo's view of its own console would result in competitive, reputational, and economic harm. Given the immense public scrutiny of these proceedings, any unsealed information is likely to be widely disseminated.
66	8	10-12	The information in this redaction discusses non-public specifications regarding the Nintendo Switch, and Nintendo has already moved to have the cited exhibit sealed in its entirety. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 5, filed on June 21, 2023.
69	8-9	28-1	The harm that would occur absent sealing the redacted information here was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 5 and 13, filed on June 21, 2023.
71	9	15-18	The information in this redaction discloses Nintendo's specific market strategy. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023.
72	9	19-22	The information in this redaction discloses Nintendo's specific market strategy. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023.

Para.	Page	Line	NOA's Position on Sealing
81	10	19-23	The cited exhibit is a sensitive and confidential that NOA has previously sought to seal entirely. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraphs 6 and 7, filed on June 21, 2023.
238	33	25	The information in this redaction misstates the cited exhibit, and public disclosure would result in a false impression that Nintendo internally supports the misstatement. False information about Nintendo would result in competitive, reputational, and economic harm. Given the immense public scrutiny of these proceedings, any unsealed information is likely to be widely disseminated.
239	34	6-9	The cited exhibit is a sensitive and confidential that NOA has previously sought to seal entirely. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraphs 6 and 7, filed on June 21, 2023.
245	35	13-15	The information in this redaction mischaracterizes the cited exhibit and public disclosure would result in a false impression that Nintendo internally supports the mischaracterization. False information about Nintendo would result in competitive, reputational, and economic harm. Given the immense public scrutiny of these proceedings, any unsealed information is likely to be widely disseminated.
250	36	13-15	The information in this redaction is a summary of, and is derived from, Nintendo's confidential business data and reveals market share information compared directly against its competitors. Public disclosure would allow insight into Nintendo's market position, resulting in competitive harm.
251	36	16-17	The information in this redaction is a summary of, and is derived from, Nintendo's confidential business data and reveals market share information compared directly against its competitors. Public disclosure would allow insight into Nintendo's market position, resulting in competitive harm.
506	86	17-26	<p>While reserving all rights as to the underlying document(s), NOA seeks to seal only the portions of this paragraph, starting after the word "because" and running through the end of the sentence, as well as the remainder of the statement after "Absent the Proposed Transaction, Activision could . . ."</p> <p>The information in these redactions contains details confidential discussions between Nintendo and Activision. Specifically, the information would reveal Nintendo's position as related to confidential third-party business negotiations. The harm that</p>

Para.	Page	Line	NOA's Position on Sealing
			would occur absent sealing was further discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023, and NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 3-4, Category 2, filed on June 26, 2023.
516	88	22-25	The information in this redaction discusses confidential negotiations with Microsoft. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 4, Category 5, filed on June 26, 2023.
519	89	5-7	This information in this redaction reveals confidential business terms of a non-public contractual agreement between Nintendo and Microsoft. Public disclosure would result in competitive harm as competitors could use such information to Nintendo's detriment in future business dealings or in the competitive gaming market. The harm that would occur absent sealing was further discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 4-5, Category 6, filed on June 26, 2023.
522	89	18-22	The information in this redaction discusses non-public specifications regarding the Nintendo Switch. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 5, filed on June 21, 2023.

IT IS SO ORDERED.

Dated: _____

HON. JACQUELINE SCOTT CORLEY
United States District Judge